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9 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
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11 UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
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13 UNITED STATES OF AMERICA,
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15 Plaintiff,

16 vs.
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18 SUNDRON LARSELL MILLER,
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Defendant.
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1:22-CR-02041-SAB-1

PLAINTIFF'S SENTENCING

MEMORANDUM

21 The United States of America, by and through Vanessa R. Waldref, United
22 States Attorney for the Eastern District of Washington, and Michael D. Murphy and
23 Christopher J. Bridger, Assistant United States Attorneys, submit the following
24 Sentencing Memorandum.
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26 I. Base Offense Level and Enhancements
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1 The PSIR provides for a total offense level of 32, criminal history category of
2 III, with a guideline range of incarceration 151-188 months to be followed by 7
3 years of incarceration. Draft PSIR, ECF 107, ¶ 198. Although making a different
4 sentencing recommendation, the United States does not have any objections to the
5 PSIR.
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7 II. Departures
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9 The United States seeks an upward departure in this matter or, alternatively,
10 an upward variance pursuant to 18 U.S.C. § 3553(a). The Guidelines are the starting
11 point and the initial benchmark for the sentencing process. *Kimbrough v. United*
12 *States*, 128 S. Ct. 558 (2007). The Court “take[s] into account the totality of the
13 circumstances” to determine whether a sentence is reasonable. *Gall v. United*
14 *States*, 128 S. Ct. 586, 597 (2007). The United States submits that a sentence of 188
15 months plus 84 months, for a total of 272 months, which would be the top of the
16 guideline range as set forth in the draft PSIR, is not sufficient to address the totality
17 of the circumstances of Defendant’s personal characteristics and of the crimes for
18 which he is convicted . If not a departure to a sentence of life imprisonment, then an
19 upward variance to a sentence of life imprisonment is sufficient but not greater than
20 necessary to accomplish the goals of 18 U.S.C. § 3553(a). Alternatively, the Court
21 should exercise its discretion and sentence Defendant 151 months on Count 1, 84
22 months consecutive as to Count 2, 27 months concurrently as to Count 3, and 135
23 months consecutively as to Count 4 for a total of 370 months incarceration followed
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1 by five years of supervised release, as that partially consecutive sentence would
2 better reflect the circumstances of Defendant's crimes and the prolonged and
3 extraordinary nature of his assaults upon the victim.
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5 Defendant pointed A.S.C.'s .308 rifle at her face and pulling the trigger, not
6 knowing the rifle was unloaded, which was an attempt to kill her. His use of the
7 weapon then, as well as later when he placed the barrel of the rifle in the victim's
8 mouth and then struck the buttstock to drive it forward, causing bodily injury,
9 justifies an upward departure pursuant to U.S.S.G. § 5K2.6 (Weapons and
10 Dangerous Instrumentalities). As detailed further below, after Defendant was unable
11 to find ammunition for the rifle and complete a murder, at the urging of co-
12 Defendant Paula Cantu-Lopez and with her assistance, he forced the victim into her
13 own truck, took control of the vehicle and drove back to his residence where he
14 further beat and injured her with the stated intent of killing her. Defendant's
15 persistence in seeking to kill A.S.C. and his actions in restraining and transporting
16 her to accomplish that goal merit upward departures pursuant to U.S.S.G. §§ 5K2.4
17 (Unlawful Restraint) and 5K2.8 (Extreme Conduct). In sum, Defendant's actions
18 merit a sentence with an upward departure to sentence of life imprisonment. But for
19 A.S.C.'s practice of ensuring that she did not keep a loaded rifle in her vehicle and
20 her flight from Defendant's residence, she would have been killed by Defendant and
21 his girlfriend.
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1 The Guideline provision for brandishing a firearm during and in relation to a
2 crime of violence is the statutory mandatory minimum. ECF 107, ¶¶ 36, 198.
3 Defendant's offense levels for Counts 1, carjacking, and 4, assault with intent to
4 commit murder, are both increased by, respectively, four and two levels based upon
5 the fact the victim suffered serious bodily injury. *Id.* at ¶¶ 29, 44. However, the
6 manner in which Defendant used the firearm in this case, beating the victim with the
7 rifle until it broke after having earlier pointed it in her face and pulled the trigger,
8 not knowing it was unloaded, is far more significant than many instances of
9 brandishing, which can be accomplished if a defendant "displayed all or part of the
10 firearm, or otherwise made the presence of the firearm known to another person, to
11 intimidate that person, regardless of whether the firearm was directly visible to that
12 person." *See* Model Crim. Jury Instr. 9th Cir. 14.22 (2023). Even though some of
13 the victim's injuries were undoubtedly caused by being struck with hands, fists, a
14 walking stick, and a BB gun in addition to being struck with the rifle, Defendant's
15 violent use of the rifle merits a departure above the guideline to life imprisonment.

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21 A sentence outside the Sentencing Guidelines carries no presumption of
22 unreasonableness. *Irizarry v. United States*, 553 U.S. 708, 714 (2008). Since
23 *Booker*, upon appellate review, "the scheme of downward and upward 'departures'
24 [is] essentially replaced by the requirement that judges impose a 'reasonable'
25 sentence." *United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011). A reasonable
26 sentence under the factors applying to this case under 18 U.S.C. §3553(a) is one of
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1 life imprisonment or, alternatively, 370 months imprisonment followed by five
2 years of supervised release.

3 III. Sentencing Factors Under 18 U.S.C. §3553(a)

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5 1. The nature and circumstances of the offense and the history and
6 characteristics of Defendant.

7 A district court may vary upward based on factors already incorporated into the
8 Guideline calculations. *United States v. Christensen*, 732 F.3d 1094, 1101 (9th Cir.
9 2013). In the instant case, Defendant, was convicted following a jury trial of
10 Carjacking, in violation of 18 U.S.C. §§ 2119, 2, Brandishing a Firearm During and
11 in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A), Felon in
12 Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1),
13 924(a)(2) and Assault with Intent to Commit Murder, in violation of 18 U.S.C. §
14 113(a)(1), 1153. ECF 107, ¶ 5. As the Court heard at trial, on December 28, 2021,
15 Defendant, his girlfriend and co-Defendant Paula Cantu-Lopez, and the victim,
16 A.S.C., went for a in the victim's truck. The uncontradicted testimony of A.S.C. was
17 that Defendant and Paula Cantu-Lopez got into an argument after smoking "blues"
18 and that, when she attempted to intervene, they turned on her. Defendant dragged her
19 out of the driver's seat of her truck and beat her with fists and feet. Paula Cantu-Lopez
20 joined in. Defendant told Cantu-Lopez to get a gun and he handed him a BB gun,
21 which he used to strike A.S.C.. He then told Cantu-Lopez to get the real gun, and she
22 retrieved A.S.C.'s Savage .308 rifle from the truck and gave it to Defendant. He
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1 pointed the rifle and A.S.C.'s face and pulled the trigger. A.S.C. heard the "click" of
2 the empty rifle going off. On discovering the rifle to be unloaded, Defendant and
3 Paula Cantu-Lopez looked for, but were unable to find cartridges. They then decided
4 to take A.S.C. back to their residence to kill her.
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6 Defendant forced A.S.C. into the passenger side of her own vehicle and Paula
7 Cantu-Lopez held her in the vehicle by her hair, from a position in the back seat while
8 Defendant drove the truck. Upon arriving at Defendant's residence, Defendant
9 dragged A.S.C. out of the truck and he and Paula Cantu-Lopez further beat her, using
10 the BB gun and the rifle again. At one point, Defendant placed the barrel of A.S.C.'s
11 .308 rifle in her mouth and then struck the butt stock of the rifle, driving it into her
12 mouth and breaking a tooth as well as causing other injuries. Defendant and Paula
13 Cantu-Lopez dragged A.S.C. up onto a porch of the residence and telling her to stay
14 put while they sought entry from another door.
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18 A.S.C. fled from the location and ran to a nearby
19 dwelling for help.
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21 At trial, both Leanda Jim, Defendant's
22 aunt, and Yakama Nation Police Department
23 Officer Gudino testified that A.S.C. looked
24 worse when they first saw her than she did as
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26 she appeared in the hospital, as shown here in Government's Exhibit 16, which was
27 also admitted into evidence at trial. When law enforcement arrived at Defendant's
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1 residence, they found the bent BB gun from A.S.C.'s truck, the broken stock of
2 A.S.C.'s Savage .308 rifle, and A.S.C.'s truck as well as blood and marks in the snow
3 from the assault. A.S.C. identified the BB gun at trial, in part by her son's name
4 written on the stock.
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6 As to Defendant's history and characteristics, he is thirty-seven years old and
7 has four children with co-Defendant Paula Cantu-Lopez. ECF 107, ¶¶ 135, 138.
8 However, the most salient characteristic of Defendant to this crime is that at the time
9 he attempted to kill A.S.C., Defendant was subject to a warrant for his arrest for
10 violating conditions of supervised release by failing to report to his probation officer,
11 consuming methamphetamine and fentanyl, and failing to complete in-patient
12 treatment, all occurring in November, 2021. *United States v. Sundron Miller*, 1:17-
13 CR-02020-SAB, ECF 77, 79, Petitions for Warrant or Summons for Offender Under
14 Supervision. Following his actions leading to the current charges, Defendant
15 remained at large until May, 2022. *See* ECF 11, Arraignment/Initial Appearance on
16 Indictment and on Supervised Release Petitions. The conviction for which Defendant
17 was under supervision was for Felon in Possession of a Firearm and he received an
18 initial sentence of forty-six months imprisonment. 1:17-CR-02020-SAB, ECF 43,
19 Judgment. Following his release from custody, Defendant began supervision on
20 October 9, 2020, and committed his first violations of his conditions of supervision
21 almost immediately. *See* 1:17-CR-02020-SAB, ECF 46, Petition for Warrant or
22 Summons for Offender Under Supervision. Defendant's supervised release was
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1 revoked on July 1, 2021, and, after a sentence of five months imprisonment with
2 credit for time served, he was released to in-patient treatment and a thirty-one months
3 of further supervision. 1:17-CR-02020-SAB, ECF 74, Judgment for Revocation of
4 Supervised Release, ECF 76, Corrected Minutes of Revocation of Supervised Release
5 Hearing. Defendant's supervision re-commenced November 3, 2021, and, as noted
6 above, he again began to violate his conditions of supervision almost immediately,
7 ultimately committing the crimes for which he stands convicted in this case less than
8 two months after his release from custody.
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11 Despite receiving a sentence of forty-six months of incarceration for the offense
12 of felon in possession of a firearm, which was at the low end of his guideline range,
13 Defendant failed to comply with supervision or take any advantage of the treatment
14 and services offered and continued to present a danger to society, all of which argues
15 for an upward variance in his sentence. *See United States v. Mumuni Saleh*, 946 F.3d
16 97, 112 (2d Cir. 2019) (Noting that compliance with institutional regulations during
17 pretrial confinement is not a mitigating factor for sentencing but that continued
18 disrespect of the rules would suggest a greater need to protect the public from further
19 crimes and to deter future criminal conduct); *United States v. Lente*, 759 F.3d 1149,
20 1173 (10th Cir. 2014) (Mitigation "[e]vidence of childhood trauma, psychological
21 issues, or youthful indiscretion is most powerful when accompanied by signs of
22 recovery"). Defendant absconded from supervision, continued to consume narcotics,
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1 and committing multiple violent crimes against A.S.C. with another firearm and now
2 appears before this Court for sentencing.

- 3 2. The need for the sentence imposed to reflect the seriousness of the offense,
4 promote respect for the law, and to provide just punishment.
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6 A.S.C. described suffering extreme pain due to the injuries inflicted by
7 Defendant and testified that she moved out of state following the attack, this even
8 though she is a member of the Yakama Nation. Defendant not only beat the victim and
9 attempted to murder her, he and his partner then forced her into the vehicle and took
10 control of her truck, drove her to his residence, broke out the window of her truck and
11 beat her further with a BB gun and with her .308 rifle. It is hard to conceive of a more
12 serious offense than a prolonged assault in furtherance of the ultimate goal of killing a
13 woman. A life sentence is appropriate to reflect the seriousness of the offense and to
14 promote just punishment. A.S.C.'s self-rescue should not inure to Defendant's benefit.
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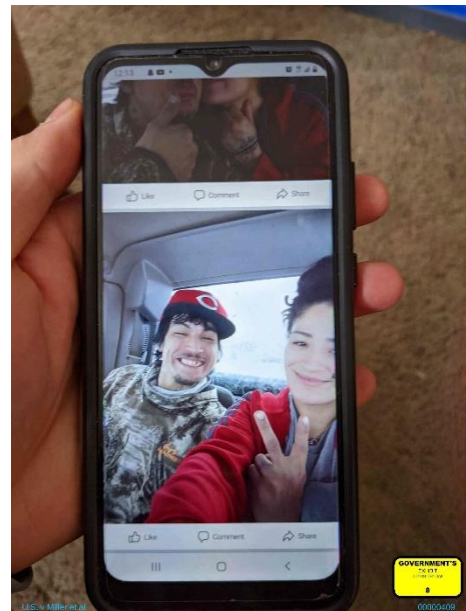
- 18 3. The need for the sentence imposed to afford adequate deterrence to criminal
19 conduct.

20 Defendant's record on supervised release in 1:17-CR-02020-SAB, in which he
21 repeatedly violated his conditions of supervision despite the prospect of up to three
22 years of additional incarceration in a case for which he had already served a sentence
23 of nearly four years of confinement demonstrates that he cannot be adequately
24 deterred from further criminal conduct. The United States submits that even a
25 Guideline sentence of 272 months is unlikely to deter Defendant from further crimes
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upon release. *See* ECF 107, ¶ 196; *also see Gall*, 552 U.S. at 52 (“[E]very case [i]s a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” (quoting *Koon v. United States*, 518 U.S. 81, 98 (1996))). Further, a sentence of life imprisonment would further the goal of general deterrence, addressing the seriousness of both an attempted killing on the Yakama Nation and the violent use of a firearm by a felon prohibited from possessing such weapons.

4. The need for the sentence imposed to protect the public from further crimes of Defendant.

Uncontradicted testimony at trial established that Defendant and A.S.C. had known each other since childhood and that his attack upon her was unprovoked. With his partner, he turned what appeared to be a cordial outing provided by a long-time friend into an afternoon and evening of extended, horrific violence. The contrast between image taken by A.S.C. of Defendant and his partner and co-Defendant, Paula Cantu Lopez, in the afternoon before the assaults, as shown in United States Exhibit 8, admitted at trial and appearing herein, and the image of A.S.C. in the hospital, as shown above, is stark. The Court cannot



1 expect to protect the public from further violence by Defendant with any sentence
2 short of life in prison.

- 3 5. The need for the sentence imposed to provide Defendant with needed
4 educational or vocational training, medical care, or other correctional
5 treatment in the most effective manner.

6 A sentence of life imprisonment would provide Defendant with effective
7 correctional treatment, including the Residential Drug and Alcohol Program (RDAP)
8 offered by the Bureau of Prisons (BOP). Further, Defendant would receive medical
9 care for the duration of that sentence. Alternatively, a sentence of 370 months
10 imprisonment followed by five years of supervised release would afford Defendant
11 with adequate correctional treatment. There is indication that Defendant has not
12 obtained a high school diploma or GED and has no specialized vocational training,
13 ECF 107, ¶¶ 134, 156, 158, at least at the time of his previous sentence of
14 incarceration. Given his record on supervised release, it is highly unlikely he has
15 obtained such training during his last federal sentence or while on supervision. A life
16 sentence would provide him with the opportunity for correctional programming to
17 obtain such education.

22 IV.

23 GOVERNMENT'S SENTENCING RECOMMENDATION

24 The government recommends that the Court impose a sentence of incarceration
25 for life, no criminal fine, the mandatory \$400 Special Penalty Assessment, and
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1 mandatory restitution. At the time of the submission of this document, no restitution
2 requests have been received.

3 DATED this 31st day of October, 2023.

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5 VANESSA R. WALDREF
6 United States Attorney

7 s/Michael D. Murphy
8 MICHAEL D. MURPHY
9 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, and a copy was emailed to the counsel of record in this case.

s/ Michael D. Murphy
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